

in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph;

(E) Specify the relief claimed under § 4.7;

(F) Be signed by the commodity trading advisor, as follows:

If the commodity trading advisor is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer;

(G) Be filed in duplicate with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department); and

(H) Be received by the Commission before the date the commodity trading advisor first enters into an agreement to direct or guide the commodity interest account of a qualified eligible client pursuant to § 4.7.

(ii) The notice will be effective upon receipt by the Commission, *Provided*, That any notice which does not include all of the required information shall not be effective, and that if at the time the Commission receives the notice, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and that in such case an exemption may be denied by the Commission or made subject to such conditions as the Commission may impose.

(iii) Any exemption claimed hereunder shall cease to be effective upon any change which would cause the commodity trading advisor to be ineligible for the relief claimed. The commodity trading advisor must promptly file a notice advising the Commission of such change.

(4) Any exemption from the requirements of § 4.31, 4.33, 4.34, 4.35, or 4.36 made hereunder shall not affect the obligation of the commodity trading advisor to comply with all other applicable provisions of part 4, the Act and the

Commission's rules and regulations, with respect to any qualified eligible client and with respect to any other client to which the commodity trading advisor provides or intends to provide commodity interest trading advice.

(c) *Insignificant deviations from a term, condition or requirement of Rule 4.7.* (1) A failure to comply with a term or condition of § 4.7 will not result in the loss of the exemption with respect to a particular pool or client if the commodity pool operator or the commodity trading advisor relying on the exemption shows that:

(i) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular qualified eligible participant or client; and

(ii) The failure to comply was insignificant with respect to the exempt pool as a whole or to the particular qualified eligible client of the commodity trading advisor; and

(iii) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 4.7.

(2) A transaction made in reliance on § 4.7 must comply with all applicable terms, conditions and requirements of § 4.7. Where an exemption is established only through reliance upon paragraph (c)(1) of this section, the failure to comply shall nonetheless be actionable by the Commission.

[57 FR 34860, Aug. 7, 1992; 57 FR 41173, Sept. 9, 1992, as amended at 60 FR 38182, July 25, 1995]

**§ 4.8 Exemption from certain requirements of rule 4.26 with respect to pools offered or sold in certain offerings exempt from registration under the Securities Act.**

(a) Notwithstanding paragraph (d) of § 4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold solely to "accredited investors" as defined in 17 CFR 230.501 in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, may

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solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the Commission and providing to such participants the Disclosure Document for the pool.

(b) Notwithstanding paragraph (d) of § 4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, that is operated in compliance with, and has filed the notice required by, § 4.12(b) may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the Commission and providing to such participants the Disclosure Document for the pool.

(c) The relief provided under § 4.8 is not available if an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity pool operator or any of its principals or if the commodity pool operator or any of its principals is subject to any statutory disqualification under §§ 8a(2) or 8a(3) of the Act.

[57 FR 34865, Aug. 7, 1992; 57 FR 41173, Sept. 9, 1992, as amended at 60 FR 38182, July 25, 1995]

### § 4.9 [Reserved]

### § 4.10 Definitions.

For purposes of this part:

(a) *Commodity interest* means:

(1) Any contract for the purchase or sale of a commodity for future delivery; and

(2) Any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act.

(b) *Net asset value* means total assets minus total liabilities, determined in accord with generally accepted accounting principles, with each position in a commodity interest accounted for at fair market value.

(c) *Participant* means any person that has any direct financial interest in a pool (e.g., a limited partner).

(d)(i) *Pool* means any investment trust, syndicate or similar form of en-

terprise operated for the purpose of trading commodity interests.

(2) *Multi-advisor pool* means a pool in which:

(i) No commodity trading advisor is allocated or intended to be allocated more than twenty-five percent of the pool's funds available for commodity interest trading; and

(ii) No investee pool is allocated or intended to be allocated more than twenty-five percent of the pool's net asset value.

(3) *Principal-protected pool* means a pool (commonly referred to as a "guaranteed pool") that is designed to limit the loss of the initial investment of its participants.

(4) *Investee pool* means any pool in which another pool or account participates or invests, e.g., as a limited partner thereof.

(5) *Major investee pool* means, with respect to a pool, any investee pool that is allocated or intended to be allocated at least ten percent of the net asset value of the pool.

(e)(1) *Principal*, when referring to a person that is a principal of a particular entity, means:

(i) Any person including, but not limited to, a sole proprietor, general partner, officer or director, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of the entity;

(ii) Any holder or any beneficial owner of ten percent or more of the outstanding shares of any class of stock of the entity; and

(iii) Any person who has contributed ten percent or more of the capital of the entity.

(2) *Trading principal* means:

(i) With respect to a commodity pool operator, a principal who participates in making trading decisions for a pool, or who supervises, or has authority to allocate pool assets to, persons so engaged; and

(ii) With respect to a commodity trading advisor, a principal who participates in making trading decisions for the account of a client or who supervises or selects persons so engaged.